

NOTICE TO ESCROW DEPOSITARY
(Regulation 2792.4)RE 611B (New 3/89)

The following Regulation of the Real Estate Commissioner contains the substantive and procedural provisions under which the homeowner association may enforce the obligations under the bond. It is recommended that the escrow depository determine if such action by the homeowner association is being undertaken prior to releasing custody of the bond to principal.

§2792.4. Special Provision for Enforcement of Bonded Obligations.

When common-area improvements which are included in the subdivision offering have not been completed prior to the issuance of the public report and the subdivision owners' association (hereafter Association) is obligee under a bond or other arrangement (hereafter Bond) to secure performance of the commitment of the subdivider to complete the improvements, the covenants, conditions and restrictions for the subdivision shall include at least the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of the subdivider and the surety under the Bond:

- (1) The governing body of the Association shall be directed to consider and vote the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any common-area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.
 - (2) A special meeting of members for the purpose of voting to override a decision by the governing body not to initiate action to enforce the obligations under the Bond or on the failure of the governing body to consider and vote on the question. The meeting shall be required to be held not less than 35 days nor more than 45 days after receipt by the governing body of a petition for such a meeting signed by members representing a 5% or more of the total voting power of the Association.
 - (3) A vote by members of the Association other than the subdivider at the special meeting called for the purpose set forth in (2) above.
 - (4) A vote of a majority of the voting power of the Association residing in members others than the subdivider to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and governing body shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.
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